

ORDER ON I.A. NO. 10 FILED BY THE DEFENDANT
No.1(a) AND (b) UNDER ORDER 3 RULE 2 R/W 151 OF
CPC

The present application is filed by the defendant No.1(a) and 1(b) seeking permission to appear through the G.P.A. holder to represent in all purpose in the present suit.

2. In the annexed affidavit it is submitted by the defendant No.1(a) is aged and also suffering from left leg gangrene and her left leg 3 fingers are removed due to heavy sugar level and the defendant No.1(b) is working in a private company at Kankanawadi, Raibal, Belagavi district. Due to this reasons defendant No.1(a) and 1(b) are unable to appear before this Court. As such, they executed the G.P.A. in favour of one Shadakshari who is having the personal knowledge in the case. On that basis the defendant No.1(a) and 1(b) prays for permission to allow the application and thereby permission to represent through GPA holder. In the application it is further submitted that there is no hardship is going to be caused to other side if the application is allowed. As such, prays to allow the application.

3. The plaintiffs filed objections by the reiterating once again the entire facts of the case there is no legally sustainable want of compelling circumstances of Order 3 Rule 2. The GPA holder cannot defend in this case. Hence, for the detailed reasons and conditions mentioned in the objections prayed to reject the application.

4. Heard the arguments and perused the records.

5. The following points arise for my consideration:

1) Whether the application filed by the defendant No.1(a) and 1(b) is deserves to be allowed and thereby permit the GPA holder to represent the defendant No.1(a) and 1(b) in this case.?

2) What order?

6. My findings to the above points are as under.

Point No. 1 : In the affirmative.

Point No. 2 : As per the final order
for the following reasons.

REASONS

7. **Point No. 1:** This case is filed for the relief of declaration, possession and permanent injunction. Order 3 rule 2 of C.P.C. states as follows:

2. Recognized agents.—The recognized agents of parties by whom such appearances, applications and acts may be made or done are —

(a) persons holding powers – of -attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the

jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

8. Further, it is very incumbent from the part of this court to quote the order 3 rule 1 of the C.P.C. Order 3 rule 1 of C.P.C. states as follows:

ORDER III Recognized Agents and Pleadors

1. Appearances, etc., may be in person, by recognized agent or by pleader. — Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader [appearing, applying or acting, as the case may be,] on his behalf : Provided that any such appearance shall, if the Court so directs, be made by the party in person.

9. Further, in the Judgment of Hon'ble High Court of Karnataka reported in (2015) ILR Karnataka 635 between Sajida Banu Vs Halema Banu it is held as follows;

8. From the above, it becomes clear that it is not obligatory on the part of the party to a litigation to appear in person, unless the law so requires. The party could prosecute or defend a legal proceedings through a Power of Attorney Holder or even a Pleader. Therefore, when the statute confers such a power on a party, it has to be honoured. The question of Court granting permission to a party to prosecute the matter through a Power of Attorney Holder or a Pleader would not arise. However, the Court cannot prevent a party from prosecuting the litigation or defending it through a Power of Attorney Holder or a Pleader. Only in some exceptional cases, such as the case arising under the Family Courts Act, where an Advocate cannot appear as a matter of right and can appear only on the permission granted by the Court, the party has a right to be represented by a Power of Attorney Holder or a Pleader.

9. Under the above circumstances, the application filed for such permission is wholly misconceived. Unfortunately, the trial Court without properly appreciating the aforesaid provision has rejected the said application on the ground that, a reasonable case is not made out for allowing the said application.

10. This is a recent trend in our judicial system. We find in almost every case, such applications are filed, objections are filed, arguments are canvassed and lengthy orders running to several pages are written, either allowing or rejecting the application and thereby wasting the precious time of the court as well as the public. This ultimately results in

delay in disposal of cases, which trend has to be put an end to forthwith.

11. Therefore, the Courts before which such applications are filed, shall apply their mind at the earliest point of time, i.e., immediately on receiving the application in the court and reject that application without waiting for the other side to file objections to it. A party should be permitted to be represented by a Power of Attorney Holder or a Counsel as a matter of right. But a party should not, as a matter of right drag prosecution of the matter through a Power of Attorney Holder. Once a Power of Attorney Holder enters the witness box and gives evidence, whether that evidence has to be acted upon, whether it is a direct evidence or hearsay evidence, is to be decided by the trial Court at the time of appreciation of the evidence. On the ground that the Power of Attorney Holder has no personal knowledge of the case, he cannot be prevented from entering the witness box and from deposing.

12. Therefore, it is high time, the trial Courts should, look to these provisions, understand the scope of the same and do not give room for entertaining such applications or write lengthy orders while allowing or dismissing such application. Such applications are to be rejected at the threshold and heavy costs should be imposed to discourage filing such applications either out of ignorance or with the motive of dragging on the proceedings.

13. Writ petition is allowed. Impugned order is hereby set aside. Application filed under Order 3 Rule 1 is hereby dismissed.

Upon careful perusal of the above said provisions of Civil Procedure Code, it is the discretionary of the party to appear himself or by his recognize agent or by a pleader. In this case, the applicant has produced the original power of attorney executed by the defendant No.1(a) and 1(b) in favour of one Shadakshari. In the said G.P.A., the defendant No.1(a) and 1(b) authorized the said Shadakshari to appear before this court in the proceedings of the present case. The said G.P.A., is also produced. It is recognized by the Hon'ble High Court and Apex Court that it is exclusively discretionary power of one party to appear himself or through agent or through pleader. The court cannot question the execution of such general power of attorney. But, the person who is holder of the power of attorney must have the personal knowledge in the case. If he failed to adduce proper evidence to his personal knowledge, it is fatal to the case of parties. The answers and the acts of the G.P.A. holder binds the executor of the such G.P.A. holder. The act of a recognized agent who is acting under G.P.A. is binding upon the master/executor. It is important to note that the plaintiff who objected the present application in this case also filed the present case through his GPA holder. Hence, by considering these reasons, the defendant No.1(a) and 1(b) made out grounds to allow the application. Hence, point No. 1 is answered in the affirmative.

10. **Point No. 2** : In view of the above findings on point No. 1, proceeded to pass the following order.

ORDER

I.A. No. 10 filed by the defendant
No.1(a) and 1(b) under Order 3 Rule 2

R/W Section 151 of C.P.C. is hereby allowed.

In the result, the G.P.A. holder of the defendant No.1(a) and 1(b) by name Shadakshari is permitted to represent the defendant No.1(a) and 1(b) in this suit.

No order as to cost.

Call on 18.07.2026.

Senior Civil Judge & JMFC.,
Manvi.